

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
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Allocation of Spectrum Below ) ET Docket No. 94-32  
5 GHz Transferred from )  
Federal Government Use )  
To: The Commission

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**COMMENTS OF AMERICAN TELECASTING, INC.**

American Telecasting, Inc. ("ATI"), by its counsel, hereby submits its comments in response to the Second Notice of Proposed Rulemaking herein.<sup>1</sup>

**I. INTRODUCTION**

ATI is the largest wireless cable operator in the United States, having in excess of 7.9 million households within its signal reach. ATI has raised over \$150,000,000 from public, private and institutional sources to dedicate to the acquisition and the development of ATI's wireless cable operations. As noted in our initial comments in this proceeding, one of ATI's major planning goals is to ensure, as best as possible, that ATI is a pioneer in the development of the "information superhighway" or, as it is also called, the National Information Infrastructure ("NII"). At this point, however, we suffer a major technological handicap of our efforts to reach that goal. While we have channels giving us out-bound capacity, we do not have sufficient capacity to offer a truly competitive, interactive package of

<sup>1</sup> Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, Second Notice of Proposed Rulemaking, ET Docket No. 94-32, FCC 95-47 (rel. Feb. 17, 1995) (the "Second NPRM").

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information services. For these reasons, ATI has been an active participant in this proceeding, viewing the allocation of government frequencies for private use as a rare, possibly unique, opportunity to implement a return channel capability.

Generally, ATI commends the FCC's decision in its First Report and Order to move forward with the allocation of the 4660-4685 MHz band for new General Wireless Communications Service (GWCS). We offer the following comments in response to the GWCS channelization, aggregation and license area rules proposed in the Second NPRM, and in regard to the competitive bidding methodologies proposed by the Commission.

**II. THE COMMISSION SHOULD RESTRICT AGGREGATION TO NO MORE THAN TEN MEGAHERTZ AND SHOULD IMPLEMENT SMALLER SERVICE AREAS**

ATI supports the proposed channelization of the 4660-4685 MHz band into five blocks of 5 megahertz each, and agrees that licensees should be permitted to obtain multiple 5 MHz blocks. However, ATI urges the Commission to reconsider its tentative decision to allow an entity to aggregate as many as three 5 MHz blocks in a given geographic area. By capping the spectrum allocation to any one entity at 10 MHz, rather than 15 MHz as the Second NPRM has proposed, the aggregation rules would allow for three licensees in all areas. In contrast, the Commission's tentative proposal would allow for as few as two licensees per service area, and would permit a single licensee to control 3 out of 5 available channels. Given the variety of needs and potential uses for the GWCS spectrum evidenced in the comments filed, and as envisioned by the Commission in the Second NPRM,

the Commission's rules should be designed to accommodate more, not fewer, licensees.

The Commission should reconsider its tentative conclusion (Second NPRM, ¶79) that "MTAs provide the best compromise" for defining GWCS service areas. The 51 MTAs into which the nation is divided cover huge areas. Indeed, MTAs are the largest of the service area alternatives generally considered by the Commission (as compared to BTAs, MSAs and RSAs), and appear to be more of an extreme than a "compromise." ATI believes that smaller service areas, such as MSAs and RSAs, would better promote deployment of the "niche" services and "services aimed at rural or relatively rural areas" that the Second NPRM recognizes are important. (Second NPRM, ¶79). Moreover, use of smaller service areas will better facilitate achievement of the Commission's fundamental objective in creating the GWCS: "enhancing the ability of service providers to meet a variety of user needs." Having tentatively determined that the GWCS should provide for a wide variety of uses rather than being assigned to specific services, the Commission should adopt a service area that will allow for the GWCS to accommodate multiple providers, including those that may not support wide area coverage. Use of MTAs will tilt the playing field dramatically in favor of the larger players, adversely affecting the development of "niche" services, competition and a diversity of service providers.

The Commission's countervailing concern, "providing a large enough area for those licensees that wish to provide wide-area or regional service" (Second NPRM, ¶79) can be accommodated by the

use of combinatorial bidding procedures, allowing applicants that wish to aggregate service areas to bid for multiple licenses as all-or-nothing packages. ATI supports the Commission's tentative conclusion to use combinatorial bidding procedures in the 4660-4685 MHz band (Second NPRM, ¶89), and urges the Commission to implement MSA and RSA service areas, or at most BTA service areas, along with combinatorial bidding. Use of anything larger than BTA service areas will defeat the Commission's objective of providing for a wide variety of usage within the GWCS.<sup>2</sup>

**III. IN THE EVENT GWCS SPECTRUM IS NOT ASSIGNED ON A SERVICE SPECIFIC BASIS, THE COMMISSION SHOULD ADOPT A SET ASIDE OF PART OF THE GWCS SPECTRUM FOR BIDDING BY WIRELESS CABLE OPERATORS OR, AT A MINIMUM, ADOPT AN ENTREPRENEURIAL SET ASIDE AND SMALL BUSINESS BIDDING PREFERENCES**

In its comments and reply comments filed in response to the original notice of proposed rulemaking in this proceeding,<sup>3</sup> ATI requested direct assignment of 4660-4685 MHz spectrum to wireless cable, a vibrant and growing industry that would make immediate and effective use of this spectrum as a return channel, enabling wireless cable to compete with the interactive capabilities of cable television plant, as well as the emerging video dialtone and other broadband service offerings of telephone companies. We continue to believe that the Commission should allocate the 4660-

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<sup>2</sup> The Commission recognizes that MTAs may be too large for some licensees and proposes to allow licensees to lease rights to operate within portions of their authorized service areas (Second NPRM, ¶80). However, the possibility that leased spectrum will be available is uncertain at best, and is not an adequate substitute for allowing licensees needing smaller areas to obtain their own licenses.

<sup>3</sup> Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, Notice of Proposed Rulemaking, ET Docket No. 94-32, 9 FCC Rcd 6779 (1994) (the "NPRM").

4685 MHz band for use as a return link for wireless cable. Although proposing to establish the GWCS to meet a variety of user needs, the NPRM acknowledges "the possibility of better accommodating these needs by prescribing rules that provide for utilization of the 4660-4685 MHz band only by specific services." (NPRM, ¶62). ATI knows of no better opportunity for immediate development of a ubiquitous interactive alternative to the cable and telephone company networks than would be occasioned by direct assignment of a portion of the 4660-4685 MHz band for use as a return channel by wireless cable providers, and we continue to urge the Commission to make a service-specific assignment of 4660-4685 MHz frequencies as the best way to promote competition in the development of the NII.

However, in the event the Commission proceeds as tentatively proposed in the Second NPRM to allocate the 4660-4685 MHz band for fixed and mobile service use generally, rather than implementing service-specific allocations, and to license this spectrum through the use of competitive bidding procedures, it should take additional steps to accommodate the needs of wireless cable in this process. In particular, the Commission should set aside a portion of this spectrum, two 5 MHz channels, for use by wireless, with the remainder available generally for other uses.<sup>4</sup> It is essential that wireless cable have spectrum available nationwide to provide a clean, unencumbered return channel if it is to effectively compete with cable and telephone company-

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<sup>4</sup> If the set aside for wireless cable is not applied for in a given area, it could then be opened up for general applications.

provided interactive broadband services. Exclusive use of part of the 4660-4685 MHz band as a wireless cable return channel would ensure that the nation's wireless cable providers -- a vibrant and established industry -- have the ability to offer their subscribers interactive service, implementing an additional and immediately effective technology "link" in the National Information Infrastructure.

At a minimum, the Commission should establish an "entrepreneurial" set aside of at least two 5 MHz channels within the 4660-4685 MHz GWCS frequency block that would be reserved for applicants meeting maximum revenue and asset criteria, such as those established by the Commission for eligibility to bid for the Block C and F Broadband PCS allocations,<sup>5</sup> and would thereby at least allow wireless cable operators to bid for spectrum in competition with other comparably smaller business entities. In addition, if the Commission decides to provide for bidding credits, installment payment options or other preferences to businesses owned by women and minorities, it should extend comparable preferences to "small businesses" which, no less than businesses owned by members of minority groups and women, are among the "designated entities" enumerated in Section 309(j)(2)(B) of the Communications Act. As between the alternative definitions of "small business" discussed in the

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<sup>5</sup> Under this standard, bidders would be required to have gross revenues of less than \$125 million in each of the last two years and total assets of less than \$500 million.

Second NPRM at ¶113, ATI suggests use of the \$40 million revenue standard used in the broadband PCS context.

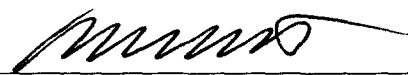
#### **IV. CONCLUSION**

The Commission should allocate the 4660-4685 MHz band for use as a return link for wireless cable for the reasons stated herein and in our initial comments. Alternatively, the Commission should provide for participation of wireless cable through adoption of the aggregation, license area and competitive bidding procedures set forth in these comments.

Respectfully submitted,

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I, Elizabeth A. Fertig, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 20th day of March, 1995, caused to be sent by first-class U.S. mail, postage-prepaid, a copy of the foregoing Comments of American Telecasting, Inc. to the following:

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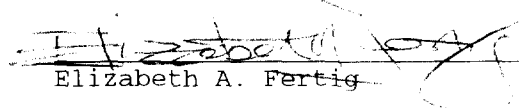
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